

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8852 OF 2004

Shri Shriniwas Rajaram Renuse & ors. ... Petitioners

V/s

Shri Nirmaldas Kewalram Deswani ... Respondent

Mr. A.S. Pratinidhi for the petitioners.

Mr. S.A. Bhagvat for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 21ST FEBRUARY, 2006

P.C.:

1. Heard learned counsel for the petitioner. Perused the record.

2. The petitioner has preferred this petition against the order passed by the Addl. Small Causes Judge, Sr.Divn., Pune, rejecting the application for amendment Exh.24 in pending Civil Suit No. 13 of 2001.

3. The application under Order VI Rule 17 of the Code of Civil Procedure was filed to seek amendment of the

plaint and insert para No.2A and seeking to insert additional ground of arrears of payment of rent and permitted increases for more than six months and thereby tenant committed default in payment of rent and on that ground the possession also was to be sought for under Sec.12 of the Bombay Rent Act.

4. After hearing both parties, the learned Trial Judge came to the conclusion that the suit was filed on 1.1.2001 in which the plaintiff had demanded rent since March, 1999 to 31.7.1999. It means there was no notice for further period of rent since 1.8.1999 till the filing of the suit. The Maharashtra Rent Control Act came into force 31.3.2000 and thereafter the suit came to be filed and now the plaintiff requires to insert the ground of default in payment of rent and, therefore, it was held that it must be in consonance with Sec. 12(2) of the Bombay Rent Act as well as Sec. 15 of the Maharashtra Rent Control Act. Under the circumstances, it was held that there was no compliance of statutory notice for demand of rent and thus amendment came to be rejected.

5. My attention was invited to the suit notice vide page 17. Copy of the notice is clear enough to show

that the tenancy came to be terminated by the end of July, 1999, however there was no compliance with Sec. 12 (2) of the Bombay Rent Act and, as such, it cannot be said to be a notice of demand within the meaning of the said provision.

6. In view of this aspect, I do not find any fault with the order passed by the Trial Court while rejecting the application for amendment by which new cause of action was sought to be introduced in the plaint.

7. Be that as it may, the fact remains that the petition is devoid of any merits and, therefore, has to be dismissed and stands dismissed with no order as to costs.

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